Supreme Court, U.S.
FILED
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No. 05-996

IN THE

Supreme Court of the United States

ROBERT LOUIS MARRAMA,

Petitioner,

v.

CITIZENS BANK OF MASSACHUSETTS,
and MARK G. DeGIACOMO, CHAPTER 7 TRUSTEE,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 30, 2006
CERTIORARI GRANTED JUNE 12, 2006

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The following opinions have been omitted in printing this joint Appendix because they appear in the appendix of the Petition for a Writ of Certiorari on the following pages:

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APPENDIX A — RELEVANT DOCKET ENTRIES OF THE UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS (BOSTON) BANKRUPTCY CASE #: 03-11987

03/11/2003	Voluntary Chapter 7 Petition (Filing Fee $ 200.00 Rcpt # 494855) missing documents: Statement of Intent due by 4:30 4/10/03 (kpm) Additional attachment(s) added on 10/7/2003. CORRECTIVE ENTRY: Incorrect PDF was Attached. Correct PDF Now Attached. (Entered: 03/12/2003)
06/23/2003	Verified Notice Of Conversion To Chapter 13 Filed by Debtor Robert Louis Marrama. Verification. (fac,) (Entered: 06/25/2003)
07/01/2003	Opposition by Trustee Mark G. DeGiacomo Re: 50 Verified Notice Of Conversion To Chapter 13 Filed by Debtor Robert Louis Marrama. (mkp) (Entered: 07/01/2003)
07/22/2003	Opposition by Creditor Citizens Bank of Massachusetts Re: Debtor's 50 Verified Notice Of Conversion To Chapter 13. c/s. (mkp) (Entered: 07/31/2003)
08/11/2003	Debtor Robert Louis Marrama's Amended Schedules I and J. (mkp) (Entered: 08/20/2003)
08/11/2003	Notice Filed by Debtor Robert Louis Marrama 71 Amendment To Schedules I And J. c/s.. (mkp) (Entered: 08/20/2003)

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08/11/2003	Debtor Robert Louis Marrama Response To: 54 Opposition Of Trustee Mark G. DeGiacomo To Debtor's 50 Verified Notice Of Conversion To Chapter 13. c/s..(mkp) (Entered: 08/20/2003)
08/27/2003	Order Dated 8/27/2003 Denying Debtor's Robert Louis Marrama 50 Verified Notice Of Conversion To Chapter 13. CONVERSION DENIED. Finding and Conclusions dictated at close of hearing incorporated by reference. (mkp) (Entered: 08/29/2003)
08/29/2003	Notice of Appeal. Fee Amount $105 Filed by Debtor Robert Louis Marrama (RE: 82 Order on Motion to Convert Case To Chapter 13). Appellant Designation due by 9/8/2003. Complied Records Due by 9/23/2003. Transmission of Designation Due by 9/29/2003. (Baker, David) (Entered: 08/29/2003)
08/29/2003	Receipt of filing fee for Notice of Appeal(03-11987) [appeal,ntcapl] (105.00). Receipt Number 0101B255273, amount $ 105.00. (U.S. Treasury) (Entered: 08/29/2003)
09/02/2003	Appellant Designation of Contents For Inclusion in Record On Appeal and Appellant's Statement of Issues Filed by Debtor Robert Louis Marrama (RE: 83 Notice

of Appeal,). Appellee designation due by 9/12/2003. (Baker, David) (Entered: 09/02/2003)

09/08/2003 Chapter 7 Trustee's Supplemental Designation of Record On: 87Appellant Designation of Contents For Inclusion in Record On Appeal and Appellant's Statement of Issues Filed by Debtor Robert Louis Marrama (RE: 83 Notice of Appeal. Appellee designation due by 9/18/2003. (mkp) (Entered: 09/16/2003)

09/10/2003 Citizens Bank of Massachusetts Designation of Contents of Additional Items To Be Included In The Record RE: 83 Notice of Appeal. c/s.. (mkp) (Entered: 09/16/2003)

12/23/2005 JUDGMENT By Bankruptcy Appellate Panel Judges Lamoute, Vaugh and Carlo, Upon consideration whereof, and in accordance with the Opinion entered on September 9, 2005, it is now hereby ORDERED AND ADJUDGED that the bankruptcy court's August 27, 2003 order denying the Debtor's Conversion to Chapter 13 is AFFIRMED. (mkp) (Entered: 12/23/2005)

APPENDIX B — RELEVANT DOCKET ENTRIES OF THE BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT CASE NO. 04-0001

9/9/04	OPINION ISSUED by Lamoutte, Vaughn, and Carlo, Bankruptcy Appellate Panel Judges. Published. (cc\cl) [04-1] (turn) [04-1]
9/9/04	JUDGMENT FILED AND ENTERED. This cause came to be heard from the United States Bankruptcy Court for the District of Massachusetts. Upon consideration whereof, and in accordance with the Opinion entered on September 9, 2004, it is now hereby ORDERED AND ADJUDGED that the bankruptcy court's August 27, 2003 order denying the Debtor's Verified Notice of Conversion to Chapter 13 is AFFIRMED. (cc\cl). (turn) [04-1]
9/14/04	Appellant's, Robert Louis Marrama Motion for Rehearing. Filed by Attorney, David G. Baker. c\s (pam) [04-1]
9/23/04	Opposition of Chapter 7 Trustee/Appellee, Mark G. DeGiacomo to Appellant's Motion for Rehearing [152478-1]. memorandum of law in support and c/s attached. (pam) [04-1]
10/21/04	Lamoutte, Vaughn, Carlo, U.S. Bankruptcy Appellate Panel Judges. ORDER DENYING APPELLANT'S MOTION FOR REHEARING..

Appendix B

11/1/04	Notice of Appeal. (Case appealed to First Circuit by Appellant, Robert Louis Marrama *Fee not Paid). [04-1] (pam) [04-1]
11/3/04	Notice of filing of appeal to Circuit Court sent to Massachusetts (Boston) Bankruptcy Court. (pam) [04-1]
11/3/04	Original Record sent to First Circuit on 11/3/04. (pam) [04-1]
11/4/04	1st Circuit Court of Appeals $255.00 fee paid. *Forwarded to 1st Circuit Court of Appeals 11/4/04. (pam) [04-1]
11/4/04	Received 1st Circuit Court of Appeals Case Number. 04-9009 (pam) [04-1]
11/21/05	Received 1st Circuit Court of Appeals Mandate. Disposition: affirmed. [04-1] (jenb) [04-1]
11/30/05	BAP Mandate Issued. Notice of entry of judgment to parties, regional U.S. Trustee and Bk. Clerk. , FILED (cc\cl). 10/12/04. (jenb) [04-1]

APPENDIX C — RELEVANT DOCKET ENTRIES OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT CASE NO. 04-9009

11/4/04 CIVIL CASE docketed. Opening forms sent.Notice of Appeal filed by Appellant Robert Louis Marrama. Appearance form due 11/18/04. Docketing Statement due 11/18/04. Transcript Report/Order due 11/18/04. [04-9009] (bety)

11/4/04 RECORD filed: 1 volume(s) consisting of docket entries 1-28. NO Transcript(s) filed. [926430-1] [04-9009] (bety)

11/8/04 APPEARANCE filed by Olga Bogdanov for Appellee Mark G. DeGiacomo. [927904-1] [04-9009] (bety)

11/9/04 APPEARANCE filed by Michael A. Wirtz for Appellee Citizens Bank of Ma. [928294-1] [04-9009] (bety)

11/9/04 APPEARANCE filed by David G. Baker for Appellant Robert Louis Marrama. [928295-1] [04-9009] (bety)

12/30/04 BRIEF filed by Appellant Robert Louis Marrama. Length: 27 pages, Copies: 10, delivered by mail. Certificate of service date 12/29/04. [946737-1] Appellee brief due 1/31/05. [04-9009] (laur)

Appendix C

12/30/04 MOTION filed by Robert Louis Marrama to waive filing of appendix, Certificate of service dated 12/29/04. [04-9009] (laur)

1/3/05 MOTION filed by Debtor Robert Louis Marrama for leave to cite additional authority. Certificate of service dated 12/30/04. [04-9009] (frnk)

1/6/05 ORDER ENTERED: Appellant's motion for waiver of the requirement of an appendix is granted. [04-9009] (laur)

1/10/05 SUPPLEMENTAL AUTHORITY pursuant to FRAP 28j filed by Appellant Robert Louis Marrama. Certificate of Service 12/30/04. [04-9009] (laur)

1/10/05 MOTION filed (via fax) by Appellee Citizens Bank of Massachusetts and Mark G. DeGiacomo to strike the portions of appellant's brief that are not part of the record and statment in support thereof. Certificate of service dated 1/10/05. [04-9009] (frnk)

1/19/05 RESPONSE filed by Appellant Robert Louis Marrama to motion to strike portion of a brief. [948469-1] Certificate of service dated 1/17/05. [951580-1] [04-9009] (heid)

1/26/05 ORDER entered by Judge Jeffrey R. Howard. Appellees' motion to strike is noted, but denied;

however, assertions which are not supported by the record will be disregarded. [04-9009] (heid)

1/31/05 BRIEF filed by Appellee Mark G. DeGiacomo. Length: 19 pages, Copies: 19, delivered by mail. Certificate of service date 1/28/05. [955107-1] [04-9009] (frnk)

1/31/05 Non-Conforming Brief filed by Appellee Citizens Bank of Massachusetts. Certificate of service dated 1/31/05. (heid)

2/7/05 BRIEF filed by Appellee Citizens Bank of Massachusetts. Length: 18 pages, Copies: 10, delivered by hand. Certificate of service date 2/7/05. Reply brief due 2/21/05. [04-9009] (heid)

2/9/05 ATTORNEY Jack Mikels for Appellee Citizens Bank of Massachusetts added to case. [04-9009] (heid)

2/9/05 APPEARANCE filed by Jack Mikels for Appellee Citizens Bank of Massachusetts. [958955-1] [04-9009] (heid)

10/31/05 OPINION filed. Judge Jeffrey R. Howard, Senior Judge Conrad K. Cyr and Senior Judge Norman H. Stahl signed Senior Judge Conrad K. Cyr, Authoring Judge PUBLISHED [1053713-1] [04-9009] (laur)

Appendix C

10/31/05 JUDGMENT entered by Judge Jeffrey R. Howard, Senior Judge Conrad K. Cyr and Senior Judge Norman H. Stahl: This cause came on to be heard on appeal from the Bankruptcy Appellate Panel for the First Circuit, and was argued by counsel. Upon consideration whereof, it is now here ordered, and decreed as follows: The judgment of the Bankruptcy Appellate Panel is affirmed. [1053714-1] [04-9009] (laur)

11/21/05 MANDATE ISSUED. [04-9009] (laur)

12/8/05 ERRATA SHEET to opinion filed. The opinion of this Court issued on October 31, 2005, is amended as follows: Cover sheet, appearances: l.2: "DeGiamomo" should be changed to "DeGiacomo"; ll.7-9: Should be replaced with the following: "Lynne F. Riley, with whom Riley & Esher, were on brief for Amicus Curiae, National Association of Bankruptcy Trustees." ll.10-14: Insert the following: "Gary Klein, with whom Roddy, Klein & Ryan, and John Rao, National Consumer Law Center, were on brief for Amicus Curiae, National Association of Consumer Bankruptcy Attorneys." [1053713-1] [1067231-1] [04-9009] (turn)

12/13/05 ERRATA SHEET to opinion filed. [1053713-1] [1068949-1] The opinion of this court issued October 31, 2005, should be amended as follows: On page 15, line 8, change "chapter 13" to "chapter 7" [04-9009] (turn)

Appendix C

12/15/05 RECORD consisting of documents 1-28 returned to originating court. (cand)

2/13/06 U.S. SUPREME COURT NOTICE filed regarding petition for writ of certiorari. Filed in the Supreme Court on [1090320-1] 01/30/06. Supreme Court case number: 05-0996. [04-9009] (laur)

APPENDIX D — VERIFIED NOTICE OF CONVERSION TO CHAPTER 13 DATED JUNE 23, 2003

UNITED STATES BANKRUPTCY COURT EASTERN DIVISION, DISTRICT OF MASSACHUSETTS

Chapter 7
Case No. 03-11987-WCH

In re:

Robert Louis Marrama,

Debtor

VERIFIED NOTICE OF CONVERSION TO CHAPTER 13

NOW COMES Robert Louis Marrama, debtor in the above captioned matter, and gives notice of conversion of the above captioned case to one under Chapter 13, and in support of his notice states that the case has not been converted from another chapter previously, and that he is qualified to be a debtor under Chapter 13.

June 23, 2003

Respectfully submitted
Robert Louis Marrama
By his attorney,

s/ David G. Baker
David G. Baker, Esq.
105 Union Wharf
Boston, MA 02109
617.367.4260
BBO# 634889

Appendix D

VERIFICATION

I, Robert Louis Marrama, hereby verify that I have read the above Notice and that the same is true and correct to the best of my knowledge and belief, and that I understand the relief available and my obligations under Chapter 13 and desire that my case be converted.

s/ Robert Louis Marrama
Robert Louis Marrama

APPENDIX E — CHAPTER 7 TRUSTEE'S OPPOSITION TO DEBTOR'S VERIFIED NOTICE OF CONVERSION TO CHAPTER 13 DATED JUNE 24, 2003

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS,
EASTERN DIVISION

CHAPTER 7
CASE NO. 03-11987-WCH

In re:

ROBERT LOUIS MARRAMA,

Debtor.

CHAPTER 7 TRUSTEE'S OPPOSITION TO DEBTOR'S VERIFIED NOTICE OF CONVERSION TO CHAPTER 13

NOW COMES Mark G. DeGiacomo, the duly-appointed Chapter 7 Trustee of the estate Robert Louis Marrama (the "Trustee") and submits this Opposition to the Debtor's Verified Notice of Conversion To Chapter 13. In support of this Opposition, the Trustee states the following:

I. FACTS

1. On March 11, 2003, Robert Louis Marrama (the "Debtor") filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code (the "Petition Date").

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2. On March 11, 2003, Mark G. DeGiacomo was appointed as the Chapter 7 Trustee of the bankruptcy estate of the Debtor.

3. On April 24, 2003, the Trustee commenced the Section 341 meeting of creditors (the "Section 341 Meeting"). The Section 341 Meeting has been continued to July 17, 2003.

4. During the Section 341 Meeting, the Debtor testified that in August of 2002, he transferred real property he owned in York, Maine (the "Maine Property") into the Bo-Mar Realty Trust (the "Trust"). The Declaration of Trust for the Trust indicates that (a) the Debtor is the 100% beneficiary of the Trust, (b) Josephine Bollettiero, who the Debtor identified as his girlfriend, is the trustee of the Trust, and (c) the Trust is revocable and purports to be a spendthrift trust.

5. The Debtor has indicated that the Maine Property is the only asset owned by the Trust. The Debtor estimated that the value of the Maine Property is approximately $220,000.00. He also indicated that it is encumbered by a mortgage which secures a $134,000.00 obligation.

6. The Debtor asserted at the Section 341 Meeting that the purpose of transferring the Property into the Trust was to "try to protect it."

7. The Debtor did not disclose the transfer of the Maine Property in response to Question 10 of the Statement of Financial Affairs or anywhere else in his bankruptcy petition.

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8. The Debtor also testified at the Section 341 Meeting that he is not living in the Gloucester, Massachusetts property (the "Massachusetts Property") in which he claims a homestead exemption. The Debtor testified that the Massachusetts Property is a rental property from which he derives a rental income.

9. As a result of the Debtor's testimony during the Section 341 Meeting, the Trustee became aware of the existence of the Maine Property and its transfer approximately seven months prior to the Petition Date. The Trustee also became aware of the potential of recovering the value of the homestead exemption for the benefit of the Debtor's bankruptcy estate. The Trustee continued the Section 341 Meeting to July 17, 2003 in order to investigate the statements made by the Debtor during the examination and the information in the Debtor's Schedules and Statement of Affairs.

10. At the Section 341 Meeting, the Trustee indicated to Debtor's counsel that he questioned the transfer of the Maine Property into the Trust. In subsequent conversations with Debtor's counsel, the Trustee indicated that it was his opinion that the Maine Property was property of the estate recoverable by the Trustee for the benefit of the bankruptcy estate.

11. On June 5, 2003, the Trustee filed his Motion to Extend Deadline for Objecting to the Debtor's discharge which was allowed by the Court on June 12, 2003.

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II. ARGUMENT

a. The Debtor's Request For Conversion Is Made in Bad Faith With An Intent To Prevent The Trustee's Recovery On Behalf Of The Estate Of (i) The Value Of The Homestead Exemption and (ii) A Fraudulent Transfer.

12. Section 706(a) of the Bankruptcy Code provides: "The debtor may convert a case under this chapter to a case under chapter 11, 12 or 13 of this title at any time, if the case has not been converted under section 1112, 1208 or 1307 of this title."

13. However, a debtor's right to convert to a Chapter 13 is not unlimited and may be denied in extreme circumstances. *In re Kuntz*, 233 S.R. 580 (1st Cir. BAP 1999); *Cabral v. Shamban (In re Cabral)*, 285 B.R. 563 (1st Cir. BAP 2000).

14. Bankruptcy Courts have denied the request for conversion based on a finding of lack of good faith and where conversion would result in abuse of process. *Kuntz* at 583. See also *In re Porter*, 276 B.K. 32 (Bankr. D. Mass. 2002) (misrepresentations in debtor's schedules, tenuous nature of plan and debtor's filing of motion to convert to avoid pending adversary proceedings were sufficient circumstances to deny conversion); *In re Jeffrey*, 176 *B.R. 4* (Bankr. D. Mass. 1994) (right of conversion is not unlimited and may be denied where debtor has acted in bad faith or where conversion would result in an abuse of process or other gross inequity).

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15. The Debtor filed this Verified Notice of Conversion To Chapter 13 after the Trustee indicated to Debtor's counsel that he views the Maine Property to be property of the bankruptcy estate recoverable by the Trustee on behalf of the bankruptcy estate of the Debtor.

16. The Trustee will also obtain a broker's opinion of value of the Massachusetts Property to determine whether any equity exists for the bankruptcy estate in the Massachusetts Property. If the Trustee determines that equity exists in the Massachusetts Property, the Trustee will object to the Debtor's exemption on the basis that the Debtor does not reside and has no intention of residing in the Massachusetts Property.

17. In this case, the Debtor's request for conversion is made in bad faith, and conversion of the case would constitute an abuse of the bankruptcy process.

WHEREFORE, the Trustee requests that this honorable Court issue an Order denying the Debtor's Conversion to Chapter 13.

Appendix E

Respectfully submitted,
MARK G. DEGIACOMO,
CHAPTER 7 TRUSTEE
OF THE ESTATE OF
ROBERT LOUIS MARRAMA,
By his attorneys,

s/ Olga L. Bogdanov
Mark G. DeGiacomo, Esq.
(BBO# 118170)
Olga L. Bogdanov, Esq.
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Murtha Cullina LLP
99 High Street
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(617) 457-4000 Telephone
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Dated: June 24, 2003

APPENDIX F — CITIZENS BANK OF MASSACHUSETTS, OPPOSITION TO DEBTOR'S VERIFIED NOTICE OF CONVERSION TO CHAPTER 13 DATED JULY 21, 2003

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

Chapter 7
Case No. 03-11987-WCH

In Re

ROBERT LOUIS MARRAMA,

Debtor

CITIZENS BANK OF MASSACHUSETTS, OPPOSITION TO DEBTOR'S VERIFIED NOTICE OF CONVERSION TO CHAPTER 13

Citizens Bank of Massachusetts, (the "Bank") opposes the Debtor's Verified Notice of Conversion to Chapter 13 as the request for conversion lacks good faith and would result in abuse of process. In further support thereof, the Bank states the following:

I. Factual Background

1. On March 11, 2003, the Debtor, Robert Louis Marrama (the "Debtor") filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code claiming no assets.

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2. The Debtor is the guarantor of certain unpaid loan obligations due to the Bank by the Debtor's defunct company RLM Flooring, Inc. ("RLM") in excess of $300,000.[1]

3. Prior to this case, the Bank commenced a civil action against the Debtor and RLM in the Massachusetts Superior Court to enforce collection of its loans and obtain equitable relief to seize the business records and manage the collection of RLM's receivables so that the collections could be applied to the outstanding balance due.[2]

4. While the Bank was seeking equitable relief in the state court action the Debtor participated in improper, and possibly illegal, activity which ultimately drained the company's assets and prevented the Bank from auditing

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1. More specifically, the Debtor guaranteed RLM's loan obligations under a written Commercial Guaranty of Performance dated February 28, 2001, a Guaranty dated October 24, 1995, and a Reaffirmation of Guaranty dated June 14, 2000. RLM's obligations include a Promissory Note evidencing a revolving line of credit in the original principal amount of $250,000.00 and a Promissory Note evidencing a demand loan in favor of the Bank's predecessor, USTrust, in the original principal amount of $20,000, as amended by a Loan Modification Agreement dated June 14, 2000.

2. An equitable order was necessary because the receivables which the Defendants were collecting were being paid to unsecured creditors and to RLM's debt "consultants" which consisted of a disbarred attorney (Leon Aronson) and a CPA who is currently being criminally prosecuted by the Attorney General for insurance fraud (Gary K. Baker). The CPA and his assistant took RLM's books and records and refused to produce them or appear for deposition in response to the Bank's multiple subpoenas.

RLM's books and records. Debtor's misconduct included concealing the company's computer records from the Bank's auditor and falsely reporting them to be stolen[3]; diverting valuable contracts and receivables to his brother's company where Debtor now works[4]; clearing out a bank account after being notified on a pending hearing for a bank account attachment[5]; evading the Bank's discovery by alleging to be too fragile to undergo deposition and then asserting the fifth amendment privilege in response to written interrogatories relating to dissipated assets[6]; filing frivolous criminal charges

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3. On the morning that Bank was scheduled to conduct an audit of RLM, Debtor reported RLMs computer server had been stolen and all backup accounting records and programs disappeared. It was later discovered by the Bank's forensic experts that the server was never missing but that the computer which was purportedly stolen was one of the office hard drives. Although the Defendants accused RLM's controller for taking the computer criminal charges were never pursued against her.

4. Debtor's Schedule I reports that he is currently employed by Capital Carpet and Flooring earning $8600.00 per month. Capital Carpet and Flooring is flooring business owned by Debtor's brother Mark Manama.

5. More than $20,000 was drained from the account: $14,500.00 was given to his attorney Jack Cullen, who was previously served with the Bank's attachment motion and $6,800.00 was supposedly a "loan" from the Debtor to one of RLM's highest paid employees. Debtor's schedules state that Attorney Cullen has an $82,000 claim against him for legal fees.

6. Witnesses in the State Court action swore that in the final months that RLM was in business, Debtor was dealing in large sums of cash. In one instance, Debtor was reportedly carrying approximately $100,000 in cash in a hand-held safe.

against two of the Bank's vice presidents and its attorney in an effort to gain settlement leverage in the case[7]; and refusing to produce financial disclosures in response to a document request that was scheduled for a hearing to compel prior to Debtor's filing of this action.[8]

5. In this case, the Debtor also appears to have acted without good faith in filing his Chapter 7 Schedules and Statement of Affairs as examination at the First Meeting of Creditors discovered that Debtor's Schedule I failed to disclose that he was earning an additional income of $2,150.00 for rental property that he owns in Gloucester Massachusetts[9] and Debtor's Statement of Financial Affairs

7. Debtor filed a criminal complaint of breaking and entering in the day time and malicious destruction of property on the day the Bank took possession of RLM's office under order of the Superior Court. During a mediation proceeding in the civil suit, Debtor's attorney, Jack Cullen, instructed Debtor in front of numerous witnesses not to dismiss the charges because they had a settlement advantage. The charges were dismissed in the criminal court on the day of the show cause hearing.

8. All of these actions will be the basis of the Bank's objection to discharge in this case.

9. Under examination at the First Meeting of Creditors, Debtor admitted that he moved out of the Gloucester Property months before filing this case and reported that he earned a monthly rental income of $ 1,500.00 for the upstairs unit and $650.00 for the downstairs. Despite the fact that he was not residing in the property nor intends to in the future, Debtor moved to avoid the Bank's $250,000 real estate attachment that was awarded in the state court action under an inapplicable homestead exemption claim. On May 28, 2003, the Court sustained the Bank's objection to the Debtor's homestead exemption.

and Schedules also did not disclose that, less than a year ago, he transferred real property he owns in York Maine into a Realty Trust to which his girlfriend, Josephine Bollettiero, is trustee and he is sole beneficiary.[10]

6. The Debtor has also intentionally hindered the Bank's efforts to ask questions regarding his financial affairs and property by: (i) refusing to appear for the Rule 2004 examination with subpoenaed documents as scheduled under Court Order on May 12, 2003;[11] (ii) failing to appear for the second continued Creditor's Meeting that had been continued by agreement of the parties to June 16; and, (iii) showing up over an hour and a half late for the third continued Creditor's Meeting on July 15, without requested documentation and unprepared to provide responses to substantive questions relating to an accounting of more than $152,000.00 cash that he netted from refinancing the Maine and Gloucester properties last summer.

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10. At the First Meeting of the Creditor's Debtor admitted that the conveyance of the Maine property was fraudulent as it lacked consideration and was put in the Trust to "protect it". According to the Debtor, the Maine property was the only asset owned by the Trust.

11. Despite having no Protective Order, the Debtor and Debtor's counsel refused to appear claiming that the Debtor "declines to answer any questions [the Bank] may have and he intends to exercise his Fifth Amendment right as he did in the state court litigation..." A copy of the letter from Debtor's counsel refusing to appear is attached hereto as Exhibit "A".

Appendix F

7. A fourth continued Creditor's Meeting is scheduled for August 21, 2003 and the deadline for objecting to the Debtor's discharge has been extended by motion to the Court to August 22, 2003.

8. Debtor filed a Verified Notice of Conversion to Chapter 13 on June 23, 2003, before the Court allowed the Bank's motion to extend the objection date to discharge.

II. Argument

Section 706(a) of the Bankruptcy Code provides: "The debtor may convert a case under this chapter to a case under chapter 11, 12 or 13 of this title at any time, if the case has not been converted under section 1112, 1208 or 1307 of this title." However, Debtor's right to convert from a Chapter 7 to a Chapter 13 is not unlimited and may be denied in extreme circumstances. *In re Kuntz*, 233 B.R. 580 (1st Cir. BAP 1999); *Cabral v. Shamban (In re Cabral)*, 285 B.R. 563 (1st Cir. BAP 2000). Requests for conversion are denied where there is a lack of good faith and where conversion would result in abuse of process. *Kuntz* at 583; *see also In re Porter*, 276 B.R. 32 (Bankr.D.Mass.2002) (misrepresentations in debtor's schedules, tenuous nature of plan and debtor's filing of motion to convert to avoid pending adversary proceedings were sufficient circumstances to deny conversion); *In re Jeffrey*, 176 B.R. 4 (Bankr.D.Mass. 1994) (right of conversion is not unlimited and may be denied where debtor has acted in bad faith or where conversion would result in an abuse of process or other gross inequity). The timing of the Debtor's Verified Notice of Conversation to Chapter 13 is highly suspect in light of the Debtor's failure to fully and voluntarily

disclose his financial condition. Debtor's request to convert from a no asset Chapter 7 is made in bad faith and, if allowed, would constitute an abuse of the bankruptcy process.

III. Conclusion

WHEREFORE, Citizens Bank of Massachusetts respectfully requests that this Honorable Court deny Debtor's Conversion to Chapter 13.

Respectfully submitted
CITIZENS BANK
OF MASSACHUSETTS

By its Attorneys,

s/ Michael A. Wirtz
Jack J. Mikels, BBO# 345560
Michael A. Wirtz, BBO# 636587
JACK MIKELS & ASSOCIATES
1 Batterymarch Park, Suite 309
Quincy, MA 02169-7454
Tel: 617.472.5600

Dated: July 21, 2003

Appendix F

EXHIBIT A

David G. Baker
Attorney at Law
42 Eighth Street, Suite 1000
Charlestown Navy Yard
Boston, Massachusetts 02129
email: dbaker@lawyers.com

Tel: [illegible] Fax: 617-507-8411

May 12, 2003

Michael A. Wirtz, Esq.
Jack Mikels & Associates
1 Batterymarch Park
Quincy, Massachusetts 02169-7454

Re: Robert Marrama

Dear Mr. Wirtz:

On Friday, I received your Motion to Examine my client pursuant to Rule 2004. It indicates that you intend to conduct the examination tomorrow at 10 a.m. Leaving aside the extremely short notice, I am not available as I have a hearing in Worcester at that time.

More to the point, however, I have spoken with my client and he has instructed me to inform you that he declines to answer any questions you may have and he intends to exercise

his Fifth Amendment right, as he did in the state court litigation when you accused him of crimes.

I question the necessity of any further questioning, in any event, give that you have already deposed him for two days and that you took all of his books and records and destroyed them during the state court litigation. In my client's view, the present activity is solely for harassment. Accordingly, neither I nor my client will appear tomorrow, and I will seek a protective order from the Court.

Sincerely

s/ David G. Baker

David G. Baker

DGB/hs

Cc: Trustee Mark DeGiacomo

APPENDIX G — TRANSCRIPT OF HEARING OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS - BOSTON DATED AUGUST 27, 2003

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS - BOSTON

Case #03-11987

Boston, Massachusetts
August 27, 2003
9:30 a.m. O'clock

IN THE MATTER OF:

ROBERT LOUIS MARRAMA

Debtor

TRANSCRIPT OF HEARING ON: (#50) VERIFIED NOTICE OF CONVERSION TO CHAPTER 13; (#54) CHAPTER 7 TRUSTEE'S OPPOSITION; (#63) OPPOSITION OF CITIZENS BANK OF MASSACHUSETTS; (#73) DEBTOR'S RESPONSE TO CHAPTER 7 TRUSTEE'S OBJECTION; BEFORE THE HONORABLE WILLIAM C. HILLMAN, J.U.S.B.C.

* * *

(At Tape #1, Index #46. 9:30 a.m.)

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THE COURT: Robert Louis Marrama.

MR. BAKER: Good morning, Your Honor. David Baker for the debtor.

THE COURT: Okay, you filed the notice of conversion. There's an opposition from the Chapter 7 Trustee. Can I hear from the Chapter 7 Trustee?

MS. BOGDANOV: Yes, Your Honor.

THE COURT: Ms. Bogdanov.

MS. BOGDANOV: Olga Bogdanov, Your Honor.

THE COURT: Go ahead. It's up to you. I know what he wants.

MS. BOGDANOV: The Chapter 7 Trustee opposes the debtor's conversion to a 13. The notice of conversion is made in bad faith, and conversion would constitute an abuse of the bankruptcy process. The notice of conversion is made in bad faith for failure to disclose the following two assets and one transfer of property:

The debtor did not identify the transfer of his Maine property into a trust within one year of the petition date on his Statement of Financial Affairs. The debtor also failed to identify his receipt of rental income from his Gloucester, Massachusetts property in his schedules. The debtor further failed to identify his entitlement to a tax refund that the Trustee only recently found out about in his schedules.

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First, the debtor identified his interest in the Maine property on Schedule B, indicating that he is a beneficiary of a spendthrift trust. The debtor did not, however, disclose in his answer to Question 10 on the Statement of Financial Affairs that he transferred the Maine property into the trust, in his own words, to protect it, within one year prior to the petition date.

Had the Trustee not asked questions and inquired into what is the nature of this spendthrift trust and the transfers around it, the Trustee would never have discovered this transfer, and that the debtor is the 100 per cent beneficiary of the trust, and that the debtor's girlfriend is the Trustee of the trust.

It's the Trustee's position that this transfer was a fraudulent transfer, recoverable by the Trustee for the benefit of the debtor's estate. According to the debtor's estimate of value, there is at least $85,000 in equity for the estate in this property. At the Section 341 meeting the Trustee indicated to debtor's counsel that he would seeking to recover this property, and it is only after that that the debtor filed his notice of conversion.

The debtor also testified at his 341 meeting that the Gloucester, Massachusetts property is a rental property from which he receives a rental income, and only amended his schedules after the Trustee discovered the income at the 341 meeting. Furthermore, the Trustee was recently contacted by the IRS in — from Augusta, Maine, and informed that the debtor had filed an amended tax return in July of 2002 for a tax refund; and now the IRS informs the Trustee that the

debtor is entitled to $8,700 in a refund. Once again, this is an asset that was not disclosed on the debtor's petition.

Clearly here, the request for conversion is made in bad faith. The debtor did not disclose all of his assets and intended to continue in the 7, hoping that the Trustee would not notice any of these non-disclosures. Case law in our jurisdiction holds that a debtor's right to convert to a 13 is not unlimited and may be denied in these types of circumstances. In the *Porter* case the debtor failed to disclose in his petition transfers of real estate to family members and only filed his amendments after the Trustee discovered the transfer. Also, in the *Jaffrey* case, the debtors failed to list a lawsuit in their schedules as an asset of the estate. In both of those cases, conversion was denied.

In this case, conversion would constitute an abuse of the bankruptcy process. The Chapter 7 Trustee should be allowed to administer this case and get a substantial dividend to creditors sooner rather than later, and the debtor should not be allowed to abuse the system by not disclosing assets, hoping that the Trustee does not notice.

THE COURT: Thank you.

MS. BOGDANOV: Thank you, Your Honor.

THE COURT: Citizens?

MR. WIRTZ: Yes, Your Honor. In addition to that, I just have to say in our papers I think I highlighted a lot of the underlying action and the abuse and misconduct that the

debtor had done in an action which Citizens Bank brought against the debtor and his defunct company.

I would like to just point out that the underlying action was quite contentious, and it has been stayed by discovery — discovery was to be compelled concerning assets that the debtor had in that case but was stayed because he filed this bankruptcy action. I think I highlighted in my motion that — or in my opposition that there was instances in which the debtor filed partial and criminal charges against two of the bank vice-presidents and me personally because we went to shut down the RLM Flooring Company under an order of the Court. He did that in order to get a settlement advantage in the underlying case.

He also has avoided answering any type of interrogatories or appearing for a deposition in the underlying case, claiming the Fifth Amendment; and he did so in this case in which you ordered him to appear for a 2004 exam, and he wrote to me on the eve of the examination and his counsel did and said, "I'm not appearing, and even I did, I'm going to plead the Fifth to all of your questions."

I think that this further constitutes and shows that there's bad faith in conversion, and that it would be a misjustice to the system to have him convert.

THE COURT: Thank you. Anyone else wish to be heard on the conversion motion?

MR. BAKER: I would.

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THE COURT: Mr. Baker, your turn.

MR. BAKER: Thank you, Your Honor. First I want to correct one false statement that both the Trustee and Citizens Bank have been persisting in — that's that he had any rental income as of the petition date. He did not. He did not testify to that, and he did not have it. It's simply false.

He did — he testified at that time that he expected to have rental income in the future. He now has that rental income. He's now employed, as — on the petition date he was unemployed, and that's the only reason he filed a Chapter 7 instead of a 13, that was because he was unemployed and unqualified for Chapter 13. As disclosed on the amended Schedules I and J, which we filed on August 11th, he now has about $1,300 a month in excess income, and (unclear mumble of words) the bankruptcy assessment for him to stay in Chapter 7 in that situation.

Now with regard to the transfer, that was a scrivener's error, which — actually my fault. I knew about - I knew about that, and it simply was inadvertently omitted from the Statement of Financial Affairs.

With respect to the tax return, we found out about that at about the same time the Trustee did; and since the money is going to the Trustee anyway, I fail to see any harm there.

In general, we just — we just feel that there is no egregious behavior of the type that occurred in the cases that have been cited by the Trustee, and conversion should be allowed.

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THE COURT: Thank you. Trus —

MS. SOLOMON: Your Honor, may I be heard?

THE COURT: Yes.

MS. SOLOMON: I haven't had the benefit of looking at the debtor's original schedules. I just looked at his Schedule F. According to Schedule F, the debtor has approximately $231,000 of unsecured debt. If the Chapter 7 Trustee's representation is correct as to the amount of equity that would be available in a Chapter 7 bankruptcy case, that would be $85,000.

What I see from the amended schedule is that the debtor proposes to pay $1,300 a month into a Chapter 13 plan. If the debtor were to pay $1,300 a month, trying to pay at least $85,000 into a Chapter 13 case, the case would have to last more than sixty months; so based on those limited facts, it appears that a Chapter 13 isn't going to be feasible anyway, because the debtor would have to pay for more than sixty months, and the Code doesn't allow that.

THE COURT: Thank you. Anyone else? I don't think there's an "Oops" defense to the concealment of assets. I believe that there is an obligation on the part of people who file schedules in bankruptcy cases to get it right, and certainly in my mind is a major presumption of bad faith when you have a grantor trust within a year of the bankruptcy and the property is not disclosed. This one smells sort of like my *Fleury* decision — I think that's been published by now — it's within the last month or two. F-L-E-U-R-I-E, if I

remember correctly. (sic — F-L-E-U-R-Y is the correct spelling. See 02-15033-WCH)

This is a bad faith case. This — the conversion will not be permitted. The Chapter 7 Truste : can continue. Thank you very much.

MS. BOGDANOV: Thank you, Your Honor.

MS. SOLOMON: Thank you, Your Honor.

MR. BAKER: Thank you, Your Honor.

MR. WIRTZ: Thank you, Your Honor.

(End at Tape #1, Index #575.)

APPENDIX H — TRANSCRIPT OF MEETING OF CREDITORS PURSUANT TO 11 U.S.C. SECTION 341 DATED APRIL 24, 2003

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

U.S. Bankruptcy Court
Massachusetts District

DOCKET NO. 03-11987-WCH

IN RE: MARRAMA

* * *

THE CLERK: Robert Marrama.

CHAPTER 7 TRUSTEE: Anyone who ah, is involved in this case, wants to ask any questions, you're welcome to come up to the table. Are you all involved in the case? Pull up some chairs. Make yourself comfortable. Sir, please raise your right hand.

(Mr. Marrama sworn)

CHAPTER 7 TRUSTEE: Please state your name.

MR. MARRAMA: Robert Marrama.

CHAPTER 7 TRUSTEE: Okay. And we've confirmed both I.D. and Social Security number. Um, sir, ah, start out by telling me why you filed bankruptcy.

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MR. MARRAMA: Well, I had a ah, floor covering company and um, [inaudible] that I could no longer keep the company going.

CHAPTER 7 TRUSTEE: Make sure you keep your voice up, sir.

MR. MARRAMA: I had a floor covering company. RLM Flooring, Inc. The company ah, wasn't able to keep going because of financial difficulties. And I had to close the business. And the outcome was I had to, I had to file personal bankruptcy.

CHAPTER 7 TRUSTEE: Okay. Um, are you working?

MR. MARRAMA: I could no longer ah, you know, pay the debt —

CHAPTER 7 TRUSTEE: Uh-huh.

MR. MARRAMA: — that I have accumulated.

CHAPTER 7 TRUSTEE: Did you have some personal liability on those business debts?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Okay. Um, was that company — ah, was that a separate company? A separate entity or was that just UDBA?

MR. BAKER: It was a corporation.

MR. MARRAMA: A corporation.

CHAPTER 7 TRUSTEE: It was a corporation.

MR. MARRAMA: S Corp. Yes.

CHAPTER 7 TRUSTEE: Has that filed bankruptcy?

MR. MARRAMA: No, sir.

CHAPTER 7 TRUSTEE: Obut I gkay. Does it ah, plan on filing bankruptcy or just

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: It's just gone?

MR. MARRAMA: It's gone.

MR. BAKER: It's — no, there was extended litigation between the corporation and Mr. Marrama and Citizens Bank. Basically Citizens Bank took the corporation.

CHAPTER 7 TRUSTEE: Re —

MR. BAKER: Whatever the assets —

CHAPTER 7 TRUSTEE: — repossessed —

MR. BAKER: — [inaudible] —

CHAPTER 7 TRUSTEE: — all the assets —

MR. BAKER: Yes.

CHAPTER 7 TRUSTEE: — and so forth. So there's nothing left there. Okay. And it was a flooring company?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Residential? Commercial? Both?

MR. MARRAMA: Ah, mainly commercial.

CHAPTER 7 TRUSTEE: Okay. I'm going to show you a copy of your bankruptcy petition, sir. Do you recognize your signature?

MR. MARRAMA: Yes, Your Honor.

CHAPTER 7 TRUSTEE: Ah, did you prepare your schedule, the statement of affairs with the help of your attorney?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Is everything accurate to the best of your knowledge?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: All right. Um, what is the address of the Gloucester real estate?

MR. MARRAMA: 47 East Main Street, Gloucester.

CHAPTER 7 TRUSTEE: Okay. Other than that real estate, have you ever owned any other real etate?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Where was that?

MR MARRAMA: Um, I have a piece of property in Maine.

CHAPTER 7 TRUSTEE: You have a piece of property in Maine? That's right. That was listed some —

MR. MARRAMA: Yeah.

CHAPTER 7 TRUSTEE: — funny place.

MR. BAKER: That's actually owned by trust, right?

MR. MARRAMA: Right. That's owned by in trust.

CHAPTER 7 TRUSTEE: By the trust?

MR. MARRAMA: Yeah.

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CHAPTER 7 TRUSTEE: Okay.

THE CLERK: It was on [inaudible].

CHAPTER 7 TRUSTEE: Yeah. Right. Okay.

MR. MARRAMA: Um, I had a house, I've owned a house in Nahant which I sold to purchase Gloucester. Um, I had a house in Burlington, Mass. which I lost through divorce. And um, I had a two family um, in Somerville which I sold.

CHAPTER 7 TRUSTEE: How long ago did you sell that?

MR. MARRAMA: Ah, about three, four years ago.

CHAPTER 7 TRUSTEE: And what did you do with the proceeds from that sale?

MR. MARRAMA: Um, with the proceeds from that sale I used to help ah, put a down payment on the house in Nahant.

CHAPTER 7 TRUSTEE: Okay. And the house in Nahant is the one that you lost in the divorce?

MR. MARRAMA: No, no.

CHAPTER 7 TRUSTEE: Okay.

MR. MARRAMA: The house in Burlington, Mass. I lost in the divorce.

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CHAPTER 7 TRUSTEE: And the Nahant house, tell me again what happened to it?

MR. MARRAMA: I sold that.

CHAPTER 7 TRUSTEE: And you used the proceeds.

MR. MARRAMA: Some of the proceeds I used [inaudible]. Right.

CHAPTER 7 TRUSTEE: Okay.

MR. MARRAMA: In Gloucester.

CHAPTER 7 TRUSTEE: Okay. What have we got on ah, the house?

MR. BAKER: Um, in terms of the value what, ah, what I have at the moment is a I have a copy of the Lexus record indicating the assessed value in 1999 of, of $125,000 — I'm sorry, $152,300. Um, we for present purposes, we've doubled, approximately doubled that. I mean it's only like three or four years but —

CHAPTER 7 TRUSTEE: Yeah. But I'm gonna need something. I need a broker's opinion of value.

MR. BAKER: Okay.

CHAPTER 7 TRUSTEE: Um, a current broker's opinion of value.

MR. BAKER: Okay.

CHAPTER 7 TRUSTEE: Um —

MR. BAKER: I'll have to get that for you.

MR. MARRAMA: I have an evaluation.

CHAPTER 7 TRUSTEE: Huh?

MR. MARRAMA: I have an evaluation for you.

CHAPTER 7 TRUSTEE: Okay. Okay. Give that to your attorney. That'll be fine. Um, what else do you —

MR. BAKER: Okay.

CHAPTER 7 TRUSTEE: Homestead?

MR. BAKER: Ah, as regards to homestead, I have a copy of it as it was filed. Unfortunately the date ah, it's a recorded [inaudible]. Ah, the date really is not very clear on it. So what I did, I've attached it, I've attached a copy of the title ah, run down which um, it says that according to the title examiner it was filed on February — let me see February 22nd, 2001. On that page. And then there's a copy of the ah, ah, certificate from the Registry's website.

CHAPTER 7 TRUSTEE: Okay. But no date of —

MR. BAKER: Unfortunately there's no date on it. Um, I could — I guess I could go to the Register's —

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CHAPTER 7 TRUSTEE: Yeah. I think I, I need ah, just try to get a clearer copy. I'm not even sure that that is — maybe that's the date there. Um, okay. And ah, loans. Evidence of um, debt. Ah, the amount due on the house?

MR. BAKER: Okay. The Wells Fargo filed a motion for relief from the automatic stay um, which asserts in paragraph um, seven, that ah, that ah, as of February 19th of this year, $250,582.87 was due. And I'll show you a copy of that.

CHAPTER 7 TRUSTEE: Ah, this just came in, right?

MR. BAKER: Yeah. It just came in.

CHAPTER 7 TRUSTEE: Now, did [inaudible] filed [inaudible] yesterday. Okay. So Wells Fargo is saying that they're owed about —

MR. BAKER: And that's just the first mortgage. I'm not sure — we're not sure what the second mortgage is owed.

CHAPTER 7 TRUSTEE: Camelot Financial —

MR. BAKER: If I hear from Camelot —

CHAPTER 7 TRUSTEE: Are you from Camelot?

CAMELOT FINANCIAL: Yes.

CHAPTER 7 TRUSTEE: So —

CAMELOT FINANCIAL: I'm sorry?

CHAPTER 7 TRUSTEE: No — nothing. Go ahead. I was just going to make a bad joke, but go ahead.

CAMELOT FINANCIAL: Thank you.

CHAPTER 7 TRUSTEE: From Cam — Camelot Mortgages. Speak up [inaudible].

CAMELOT FINANCIAL: Ah, the principal balance is about $150,000. There's a significant amount of interest.

CHAPTER 7 TRUSTEE: They have you about ah, $160,000 is what they thought. But maybe even more than that.

CAMELOT FINANCIAL: It might be more than that.

CHAPTER 7 TRUSTEE: And Presidential Financial is ah, a third mortgage ah, attachment by Citizens. Have you moved to get rid of these liens?

MR. BAKER: Yes.

CHAPTER 7 TRUSTEE: [Inaudible] And um —

MR. BAKER: It's on for hearing next Wednesday.

CHAPTER 7 TRUSTEE: Okay. [Inaudible]. All right. Presidential Financial Corp. That's seven, about $750,000. What was that loan all about?

MR. MARRAMA: Ah, that loan never really took place, ah, sir. That was something that we had — we were going to hope to get ah, for relief, to keep the business going and pay down Citizens Bank. But that never ah, we never closed on that loan.

CHAPTER 7 TRUSTEE: But there's a mortgage of record?

MR. BAKER: There is a mortgage of record.

MR. MARRAMA: They never released —

CHAPTER 7 TRUSTEE: But, but they never gave you any money?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Okay. So even though they're listed as a mortgage record, they never gave you any money?

MR. MARRAMA: Correct.

CHAPTER 7 TRUSTEE: Okay. Camelot's mortgage, what did they um, what did you do with that money?

MR. MARRAMA: That money was directly wire transferred trom their account into my business account.

CHAPTER 7 TRUSTEE: And you — obviously you personally guaranteed to Camelot —

MR. MARRAMA: That's correct.

CHAPTER 7 TRUSTEE: — the obligation? All right. And Wells Fargo, was that just a first mortgage ah, purchase money mortgage or —

MR. MARRAMA: Yes. Wells Fargo was a mortgage.

CHAPTER 7 TRUSTEE: Did you use that money to buy the house?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Okay. All right.

THE CLERK: And what was the first mortgage?

CHAPTER 7 TRUSTEE: Ah, Wells Fargo was the first mortgage.

THE CLERK: Wells Fargo. That's —

CHAPTER 7 TRUSTEE: Yeah.

THE CLERK: Okay.

CHAPTER 7 TRUSTEE: So that was just a purchase money mortgage. Camelot's money was used for the business and Presidential never gave any money. Okay. Ah, and um, you, you must have statements from Wells Fargo at home that show how much money is owed?

MR. MARRAMA: Yes, sir.

CHAPTER 7 TRUSTEE: Could you just send a copy to your attorney?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Um —

MR. MARRAMA: This is [inaudible] —

CHAPTER 7 TRUSTEE: Oh, I'm sorry, I'm sorry. You're right. Ah, this one is from Wells Fargo.

MR. BAKER: This is —

CHAPTER 7 TRUSTEE: Okay. No, that is sufficient. Yeah. That's fine. I'll look at that. Okay. Ah, under $1,000 dollars in cash or the bank, is that true?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Ah, do you own any item of personal property worth more than $500 a piece other than perhaps the watch?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Ah, do you own any life insurance other than term?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Are you the beneficiary of anyone's life insurance, estate or trust?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Do you have any IRA's, retirement accounts?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Ah, stocks or bonds other than the stock in the now defunct RLM?

MR. MARRAMA: Correct.

CHAPTER 7 TRUSTEE: And no other stocks?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Ah —

MR. BAKER: Ah, to, to clarify [inaudible], he is the beneficiary of the, the realty trust which owns the property in Maine. And I have a copy of that declaration of the trust.

CHAPTER 7 TRUSTEE: Yeah. Okay. Let me — we'll get to that. But ah, accounts receivable. The company may have some but you don't have any?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Nobody owes you any money?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Any litigation you can bring to collect money?

MR. MARRAMA: [No audible response.]

CHAPTER 7 TRUSTEE: Do you have a counterclaim against Citizens?

MR. BAKER: A potential counterclaim, yes. Um —

CHAPTER 7 TRUSTEE: Has it been asserted?

MR. BAKER: Ah —

MR. HOLLAND: It's been asserted.

MR. BAKER: Attorney Jack Hol —

MR. HOLLAND: I asserted it.

MR. BAKER: Attorney Jack Holland represented him in the, in the corporation in the civil, in the litigation against Citizens Bank so I'd ask him to —

MR. HOLLAND: Several million dollars.

CHAPTER 7 TRUSTEE: Okay.

MR. HOLLAND: The counterclaim.

CHAPTER 7 TRUSTEE: Is that — and that's pending now, Jack?

MR. HOLLAND: Well, it's — the, the stay because your Honor [inaudible], stayed —

CHAPTER 7 TRUSTEE: But it's pending?

MR. HOLLAND: It's pending. It's up to you to decide at some point ah, what you wish to do with it.

CHAPTER 7 TRUSTEE: Okay.

MR. HOLLAND: So when you're ready to do that I'll bring over the documents and I'll debrief you.

CHAPTER 7 TRUSTEE: Okay.

MR. HOLLAND: I'm sure the bank's counsel will as well.

CHAPTER 7 TRUSTEE: Okay. Good. All right. Um, okay, let's talk about this ah, property in Maine. Okay. It's held in ah —

MR. BAKER: Here's a copy of the declaration of trust. Ah, you'll note paragraph six has ah, spend thrift language.

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CHAPTER 7 TRUSTEE: Okay. Who is Josephine?

MR. MARRAMA: Josephine's ah, my girlfriend.

CHAPTER 7 TRUSTEE: Okay. So let's — and she is the trust and you are the 100 percent beneficial interest holder in the Omar Realty Trust?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Okay. Ah, when was this trust — it looks like the trust was created in ah, August of 2002?

MR. MARRAMA: I think it was before that wasn't it?

MR. BAKER: Um, I don't know. This was handled by a firm in Maine.

MR. MARRAMA: Yeah. I, I don't know the exact date. I thought it was 2001. I'm not sure of that. I'd have to check with the attorney up there. Jeff Clark [phonetic] was the attorney [inaudible].

CHAPTER 7 TRUSTEE: Okay. Okay. The attorney up there, let's get his information. What's his name?

MR. MARRAMA: Jeff Clark.

CHAPTER 7 TRUSTEE: Jeff Clark.

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Do you recall ah, where, where is his office?

MR. BAKER: Um, it's in York, Maine.

CHAPTER 7 TRUSTEE: Do you have a number there

MR. BAKER: Um —

CHAPTER 7 TRUSTEE: — for him?

MR. BAKER: A telephone number?

CHAPTER 7 TRUSTEE: Yeah.

MR. BAKER: Tw — ah, 207 — oh, let's see — oh, that's not right [inaudible]. 207-363-5208 it looks like.

CHAPTER 7 TRUSTEE: All right. And the um, the only thing that this trust owns is um, real estate in Maine?

MR. MARRAMA: Yes, sir.

CHAPTER 7 TRUSTEE: Okay. Um, what would — tell me about this real estate. Where, where is it located? What's the address? What is it?

MR. MARRAMA: It is a um, cottage, single family dwelling. Um, it's located in York, Maine on Norton Avenue.

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CHAPTER 7 TRUSTEE: Is there a number on Norton Avenue?

MR. MARRAMA: Twenty-seven.

CHAPTER 7 TRUSTEE: 27 Norton. Okay. Ah, and when was that first purchased by you or any relative?

MR. MARRAMA: Um, I believe it was purchased five years ago. Four or five years ago.

MR. BAKER: Can I see that?

CHAPTER 7 TRUSTEE: Ah, let me look at it first (inaudible). Go, go back please. Ah, by whom?

MR. MARRAMA: It was purchased by me four — about five years ago.

CHAPTER 7 TRUSTEE: Okay. So you bought the, the property five years — did you buy it from a relative or anything?

MR. MARRAMA: No, I bought it ah, it was a ah, owner financed property that was an advertisement that was on a ah, actually it was on the telephone pole. I was away for the weekend in York, Maine and we drove by the property to look at it. And it was ah, owner financed property.

CHAPTER 7 TRUSTEE: Okay. And um, and how much did you pay for it? .

MR. MARRAMA: Ah, $40,000 dollars.

CHAPTER 7 TRUSTEE: And was that all cash, did you — or did you say the owner took back a mortgage?

MR. MARRAMA: No, the owner took back a note. put 10 percent down and the owner took back a note.

CHAPTER 7 TRUSTEE: So you put down $4,000?

MR. MARRAMA: Yes, sir.

CHAPTER 7 TRUSTEE: Okay. And he took back a note for the $36,000?

MR. MARRAMA: Yes, sir.

CHAPTER 7 TRUSTEE: Roughly.

MR. MARRAMA: Correct.

CHAPTER 7 TRUSTEE: Okay. Um, and you bought it in your own name?

MR. MARRAMA: At that time, yes.

CHAPTER 7 TRUSTEE: At that time. Okay. Is there still money owed on the ah, note?

MR. MARRAMA: I have ah, ac — I refinanced it through um, Bank —

MR. BAKER: I think I saw it something in —

MR. MARRAMA: Bank One I believe it is.

CHAPTER 7 TRUSTEE: Okay.

MR. MARRAMA: Yes. I refinanced through Bank One.

MR. BAKER: I have a statement from Bank One dated ah, November 18th, 2002 um, which unfortunately doesn't give the ah — oh, I'm sorry, yes, it does Principal balance as of that date was $134,778.

CHAPTER 7 TRUSTEE: Now, did you do some work to the house?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: What did you do?

MR. MARRAMA: I ah, put new siding on and I added a um, two bedrooms upstairs.

CHAPTER 7 TRUSTEE: Okay. Substantially increased the value —

MR. MARRAMA: Yeah.

CHAPTER 7 TRUSTEE: — it sounds like?

MR. MARRAMA: Yes.

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CHAPTER 7 TRUSTEE: Okay. Um, so you — ah, when did you take out this mortgage with Bank One?

MR. MARRAMA: Ah, back in the spring of last year I believe. I don't recall the exact date but it was —

CHAPTER 7 TRUSTEE: Sometime —

MR. MARRAMA: — probably a year ago or maybe less.

CHAPTER 7 TRUSTEE: Okay.

MR. MARRAMA: Approximately.

CHAPTER 7 TRUSTEE: All right. Um, and so you got about $100,000 dollars cash out of the refinance it sounds like.

MR. MARRAMA: It was $135,000.

CHAPTER 7 TRUSTEE: But you paid off the first —

MR. MARRAMA: Right.

CHAPTER 7 TRUSTEE: — the, the one you —

MR. MARRAMA: Right.

CHAPTER 7 TRUSTEE: — the purchase money.

MR. MARRAMA: That's right.

CHAPTER 7 TRUSTEE: And then you — and you were left with about $100,000 in cash?

MR. MARRAMA: Yeah, it was yeah, a little more than that I believe, but yes.

CHAPTER 7 TRUSTEE: Okay. Um, and what happened to that $100,000'ish?

MR. MARRAMA: Um, it was about — if I remember correctly, $40,000 or $50,000 dollars I had to give back to — the um, the bonding company had advanced us some money and I had to give some money back to ah, to a contractor because we, we used that money from them through the bonding money, it was supposed to, we were supposed to get from the contractor. So I had to give that, about $40,000 or $50,000 of that back. Um, I tried to pay off some personal debt and the rest of the money I just actually was living with until not too long ago and now we, you know —

CHAPTER 7 TRUSTEE: Okay.

MR. MARRAMA: — depleted.

CHAPTER 7 TRUSTEE: Did you um, did you take the proceeds from that closing and put it into a, a single bank account and just write checks off of that?

MR. MARRAMA: Yes, sir.

CHAPTER 7 TRUSTEE: Okay. Ah, and you say now all the money is gone?

MR. MARRAMA: Yes, sir.

CHAPTER 7 TRUSTEE: Okay. Ah, what I'd like to do — okay. Do we have anything on the evidence, the current evidence of value of this?

MR. BAKER: For that property. I could get something but do you question the validity of the spend thrift provision?

CHAPTER 7 TRUSTEE: Ah, yes. He bought this property and ah — okay. So we have here an appraisal showing $220,000 as of last year. [Inaudible]. So why don't we get an, an updated ah, broker's opinion of value or something on the um, on the property.

MR. MARRAMA: Okay.

MR. BAKER: Okay.

CHAPTER 7 TRUSTEE: Um, and I'd like to get the HUD statement ah, for the closing. And then I need um, checking statements —

Mr. BAKER: okay.

CHAPTER 7 TRUSTEE: — and copies of the checks that show how it was spent.

MR. BAKER: Okay. I'm not sure we're gonna be able to comply with that request. During this litigation with Citizens Bank, Citizens seized all — with the permission of the Superior Court, seized all of his bus — per — business and personal records and then di — and then again with the permission of the Superior Court, destroyed them. Here's a copy of Citizens Bank's motion and a copy of the Order allowing them to be destroyed.

CHAPTER 7 TRUSTEE: Okay. Was this, the account that the money went into and was um, disbursed out of, with Citizens Bank account?

MR. MARRAMA: Yes, sir.

CHAPTER 7 TRUSTEE: Okay.

MR. MARRAMA: However it was —

CHAPTER 7 TRUSTEE: Citizens is —

MR. WERTZ: Right here.

CHAPTER 7 TRUSTEE: [Inaudible] Citizens. Okay. I assume you guys can get that for me on microfiche or whatever.

MR. WERTZ: For the Citizens —

CHAPTER 7 TRUSTEE: For the, for this account. Yeah. I mean is that true? Is it all — you, you took them all and they're all destroyed now?

MR. WERTZ: No, it's not true. And if there are particular records that they claim are in our possession we have an inventory which was taken by a stenographer.

CHAPTER 7 TRUSTEE: Okay.

MR. WERTZ: So we can show what was taken.

CHAPTER 7 TRUSTEE: Okay.

MR. WERTZ: Ah, under the Order ah, we were allowed to give notice to — and this become an issue I think in this case — we were allowed to give notice, 10 days notice to ah, Mr. Marrama's counsel, Jack Holland who spoke earlier here today, which we did and got no response, didn't want any part of the records. Some of them may have been destroyed pursuant to the Order. Others we may still have in our possession. So if there is a list of records that they're looking for, I'd say they come forward now and say which ones they want.

CHAPTER 7 TRUSTEE: Well, I'm, I'm looking for the records.

MR. WERTZ: Yep.

CHAPTER 7 TRUSTEE: Um, so I think whether it's original records that you may not have destroyed or obviously you know, I, I'm just looking for checking statements and cancelled checks. I want to know um, how this gentleman spent $100,000 dollars since the last spring, approximately.

MR. WERTZ: Yeah.

CHAPTER 7 TRUSTEE: Um, to be able to see where that money went.

MR. WERTZ : I —

CHAPTER 7 TRUSTEE: Okay?

MR. WERTZ: In our litigation, I think that we've looked into that.

CHAPTER 7 TRUSTEE: Uh-huh.

MR. WERTZ: And I don't think that it was deposited into the Citizens account. I'll double check, but we've been trying to trace this money our — ourselves. There's been other mortgages with ah, pretty substantial amounts of money and that all sort of disappeared and dissipated as well.

CHAPTER 7 TRUSTEE. Um, are you confident that the money went into that Citizens Bank account?

MR. MARRAMA: The money was drawn um, we passed papers in Maine. The money was ah, originally deposited into the, the attorney's bank from Maine and then I had wrote a check from that bank to my account in Citizens.

CHAPTER 7 TRUSTEE: Okay. Well, that's, that's what I, I'm looking for on that piece, so —

MR. WERTZ: Okay.

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CHAPTER 7 TRUSTEE: — whatever ah, whatever we can get on that. All right.

MR. WERTZ: It was — there, there was a second account to ah, I think the Trade Union Bank ah, in South Boston. Um, and we've been trying to track down records for that as well. There is two individuals who I'll ask about later, who have those records and I think [inaudible] as well.

CHAPTER 7 TRUSTEE: Are those um, for personal, personal accounts?

MR. WERTZ: Both personal and ah, corporate accounts.

CHAPTER 7 TRUSTEE: Okay. All right. But we think the money went through the Citizens account?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: This money that we're talking about?

MR. MARRAMA: Yeah. I never had a personal account with [inaudible].

MR. BAKER: Okay. Ah, [inaudible] I'm sure that anything that Citizens —

MR. WERTZ: I can provide you —

MR. BAKER: — that I get a copy of it.

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CHAPTER 7 TRUSTEE: Yep. Okay. Um, so Jack, you're, you're listed as a creditor?

MR. HOLLAND: That's correct.

CHAPTER 7 TRUSTEE: Okay. But you're — this — you, you were cou — and you're still counsel, you didn't withdraw from that case?

MR. HOLLAND: No.

CHAPTER 7 TRUSTEE: Okay. Um, on the Schedule F, um, obviously you, you've listed ah, everything that — well, I think obviously — that he may be liable for um, I'm assuming some of these there aren't guarantees, but given the fact that, you just put them in, in an abundance of caution?

MR. BAKER: Exactly.

CHAPTER 7 TRUSTEE: Okay. So um, because people who actually um, have personal guarantees or can legitimately assert personal liability ah, is some subset of, of this group?

MR. BAKER: Yeah.

CHAPTER 7 TRUSTEE: Okay. And you now work for another ent — Capital Carpet and Flooring, sir?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: And do you have any ownership interest in that business?

MR. MARRAMA: No, sir.

MALE VOICE: What was the name of that company?

MALE VOICE: It's his brother's company.

CHAPTER 7 TRUSTEE: Ah, Capital —

MALE VOICE: Capital —

CHAPTER 7 TRUSTEE: — Carpet and Flooring. Ah, Statement of Affairs question one. There's no dollar amount?

MR. BAKER: There should be. Ah, we, we weren't able to get copies of his tax returns. I think that's ah, why that's — the dollar amount [inaudible].

CHAPTER 7 TRUSTEE: Okay.

MR. BAKER: Once we, once we get his tax returns.

CHAPTER 7 TRUSTEE: Okay. Okay. And two vehicles have been repossessed. The Lexus and the Dodge Ram?

MR. MARRAMA: Yes. Plus the um —

CHAPTER 7 TRUSTEE: The boats? More?

MR. MARRAMA: Oh, yeah. There was another um, truck that was — no — yeah, it was a truck that was leased by Hertz that they took back.

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CHAPTER 7 TRUSTEE: Okay. [Inaudible]. Okay. All right. Um, what I'm going to do now ah, as, as we discussed I think um, yesterday, give people a few minutes to ask really relevant questions. What I'm interested in at this point is any information ah, that may lead to asset recovery from the personal estate for the benefit of creditors. Ah, we can continue this ah, 341 meeting in my office, ah, where we'll have plenty of time, or as I suggested the ah, yesterday or the day before ah, people may want to think about 2004 examinations to make it a little more official. Um, but for now everyone just, just take a few minutes and then we'll um, we'll continue this matter anyway. And if we want to, people want to do it in my office, that'll be fine. Okay?

MR. WERTZ: Great. Ah, on behalf of Citizens Bank, Michael Wertz.

MR. BAKER: Could I have a card? Do you have a business card?

MR. WERTZ: I'll get it.

.MR. BAKER: Thank you.

CHAPTER 7 TRUSTEE: From Jack Michael's office.

MR. WERTZ: [Inaudible]. Ah, I think earlier I mentioned that there was some records taken from the company ah, which the bank was not able to get, including personal records and business records. And they're held by the name of individuals by testimony from other witnesses,

of Cindy Cutty [phonetic] and a Gary K. Baker. And I just want to know where those individuals are since they've avoided and ah, are in contempt of subpoenas in the Superior Court action.

CHAPTER 7 TRUSTEE: Do you know who those people are?

MR. BAKER: Well Gary Baker is his ah, accountant.

MR. MARRAMA: Yeah. Gary Baker I hired as an accountant.

CHAPTER 7 TRUSTEE: Okay. So he has —

MR. BAKER: He's no relation to me by the way.

CHAPTER 7 TRUSTEE: I, I assume not. Ah, and does he have some business records of the corporation?

MR. MARRAMA: Um, I don't recall it was business records. I know that he worked — at the time we were trying to get refinancing and everything um, Gary had come in and he had someone come in to help him. I wasn't really sure as to who the, who the people were that he had come in to help him. I wasn't sure of their names. I just knew Gary.

MR. WERTZ: Okay.

MR. MARRAMA: All right. But ah, yeah, but we did have someone come in because we were trying to ah, we —

were hoping at that time for ah, some financing to go through to keep the company alive.

CHAPTER 7 TRUSTEE: All right. So he may have some business records.

MR. MARRAMA: Ah, he may have but I'm, I'm not sure.

CHAPTER 7 TRUSTEE: Okay. And where is he located.

MR. MARRAMA: I'm not sure where Gary is.

MR. BAKER: Ah, he has an office in Stoughton and an office in —

MR. MARRAMA: Yeah, he's always —

MR. BAKER: — [inaudible].

MR. MARRAMA: — he always came to my —

MR. BAKER: He's back and forth between —

MR. MARRAMA: — office.

MR. BAKER: — Florida and Massachusetts.

CHAPTER 7 TRUSTEE: All right.

MR. BAKER: He's, I think he's in Florida at the moment.

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CHAPTER 7 TRUSTEE: All right. But he has an office in Stoughton?

MR. BAKER: Uh-huh.

CHAPTER 7 TRUSTEE: Okay.

MR. WERTZ: I know that he is coming up in June to answer a ah, criminal complaint in the Stoughton District Court for some insurance fraud. Ah, perhaps on his trip back up he can bring those records with him.

CHAPTER 7 TRUSTEE: Okay.

MR. WERTZ: And Cindy Cutty who is local and she lives in Norwood.

CHAPTER 7 TRUSTEE: And who is she?

MR. WERTZ: Ah, she supposedly is affiliated with Mr. Baker and we would like all the records that she seized from the company as well.

MR. BAKER: Yeah. With Mr. Baker [inaudible] Mr. Baker.

CHAPTER 7 TRUSTEE: Do you, do you know Cindy Cutty?

MR. MARRAMA: I don't know her personally, no.

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CHAPTER 7 TRUSTEE: But she's —

MR. MARRAMA: [inaudible] —

CHAPTER 7 TRUSTEE: — [inaudible] person that you talked about coming in and stuff like that?

MR. MARRAMA: Yep.

CHAPTER 7 TRUSTEE: Okay. All right. Why don't you follow up um, follow up with me on that one.

MR. BAKER: Okay.

MR. WERTZ: Ah, the ah, next question I have is Gloucester property is a two family or a two unit property and I'd like to know who's living in the second unit and how much rent is being paid.

MR. MARRAMA: Actually ah, both units are being rented.

MR. WERTZ: So you — don't live there?

MR. MARRAMA: I haven't lived there, no. I couldn't afford the mortgage [inaudible]. I'm four months behind and ah, I believe and Mr. Baker has ah, mentioned um, they have filed for relief.

CHAPTER 7 TRUSTEE: The, the bank has filed for relief? Well, you listed your — where do you live now, sir?

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MR. MARRAMA: I've been living in Maine.

CHAPTER 7 TRUSTEE: Are you living in the cottage in Maine?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: How long you been living there?

MR. MARRAMA: Oh, about two months.

CHAPTER 7 TRUSTEE: Just the last couple of months?

MR. MARRAMA: Yeah.

CHAPTER 7 TRUSTEE All right. And um, and you've been renting a, you're renting —

MR. MARRAMA: I just —

CHAPTER 7 TRUSTEE: — both sides?

MR. MARRAMA: Yes. Yes, just started renting it, yes

CHAPTER 7 TRUSTEE: Okay. You, when you say just started, just within the last —

MR. MARRAMA: The last month.

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CHAPTER 7 TRUSTEE: — month or so? Okay. And you're getting rental from them? You're getting rent from these folks?

MR. MARRAMA: Um, I will be starting at May 1st.

CHAPTER 7 TRUSTEE: Okay. How much rent?

MR. MARRAMA: The upstairs um, ah, apartment is $1,500 and the downstairs is $650. Which would have been just enough to cover the mortgage.

CHAPTER 7 TRUSTEE: So what is your long term plan with the Gloucester house?

MR. MARRAMA: Well, the long term plan is to hopefully some day is to reside there.

CHAPTER 7 TRUSTEE: So the foreclosure's going forward though or —

MR. MARRAMA: Yeah.

CHAPTER 7 TRUSTEE: — they're gonna be getting relief.

MR. BAKER: We have um — well, we hope to, hope not. Hope that that won't happen. We're looking at some refinancing.

MR. MARRAMA: We're looking at some refinancing —

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CHAPTER 7 TRUSTEE: All right.

MR. MARRAMA: — ah, options.

CHAPTER 7 TRUSTEE: And the amount — that's when you listed rent ah, mortgage, you have $1,949 dollars. Is that for all of the mortgages on the house?

MR. MARRAMA: Ah, yes. It's actually a little more than that, I believe, sir, with the ah, taxes and everything.

CHAPTER 7 TRUSTEE: And what about the mortgage payment on Maine for —

MR. MARRAMA: That just — that's ah, $1,009 dollars a month or $1,010 I believe.

CHAPTER 7 TRUSTEE: Okay. So that's —

MR. BAKER: Do you pay that?

MR. MARRAMA: Ah, yeah. But it's two payments behind as of right now. [Inaudible].

MR. BAKER: Okay. But you pay that? So that should be the current ah —

MR. MARRAMA: Right.

MR. BAKER: — ah —

WELLS FARGO: Excuse me for one second. The payment that you said was for all the mortgages, I believe you meant that payment was just the Wells Fargo mortgage.

CHAPTER 7 TRUSTEE: Ah, the $1,900 that's just Wells Fargo?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Okay. So the other mortgages are not included on the expenditures either? I mean you're hoping to keep the house so you're hoping —

MR. MARRAMA: Yeah. Right.

CHAPTER 7 TRUSTEE: — to continue to pay those.

MR. MARRAMA: Yeah.

CHAPTER 7 TRUSTEE: Okay. So you've to amend Jim.

MR. BAKER: Yeah.

CHAPTER 7 TRUSTEE: Okay.

MR. WERTZ: Ah, we —

CHAPTER 7 TRUSTEE: A couple of more questions.

MR. WERTZ: Sure. With regards to the conveyance to ah, Omar Realty Trust, what was the sales price for that?

MR. MARRAMA: What was the sales price?

MR. WERTZ: Yeah.

CHAPTER 7 TRUSTEE: When you conveyed it to the trust.

MR. MARRAMA: It was the — Pardon me?

CHAPTER 7 TRUSTEE: I assume that's what you're asking right?

MR. WERTZ: I am.

CHAPTER 7 TRUSTEE: Yeah. When you conveyed the, the Maine property to the trust, did the trust pay you anything?

MR. MARRAMA: No.

CHAPTER 7 TRUSTEE: Okay.

MR. MARRAMA: It was just for the value of the property.

CHAPTER 7 TRUSTEE: Why did you put it in trust?

MR. MARRAMA: Why did I put it in trust? Um, I guess to try to protect it.

MR. WERTZ: Yeah. Exactly. Ah, can you tell me what CMM Enterprises is and what your affiliation is with that company?

MR. MARRAMA: CMM Enterprises was a um, company that I started, a limousine company which is ah, all the vehicles have been sold and no longer in existence.

MR. WERTZ: Who were the partners in that business?

MR. MARRAMA: Pardon me?

MR. WERTZ: Who were your partners or who were the investors ah, principals in that business?

MR. MARRAMA: I had a cousin that I was involved with.

MR. WERTZ: And is that company still in existence?

MR. MARRAMA: No. [Inaudible].

CHAPTER 7 TRUSTEE: Two more questions.

MR. WERTZ: Sure. Um, in your Schedule J you have transportation amount of $300 dollars and then you have another addition for $260 for auto payments. Can you tell me what the $300 dollar transportation is?

MR. MARRAMA: Can I see that?

MR. BAKER: It just is a matter form. Usually I ah, put in that line item ah, things for gasoline ah, maintenance of the car.

CHAPTER 7 TRUSTEE: Well, you've got to amend that because you can't just have stock numbers. This has to be based on his experience and what he uses in Schedule J.

MR. WERTZ: And the last question —

CHAPTER 7 TRUSTEE: Well —

MR. WERTZ: — until we adjourn —

MR. BAKER: Well, since he's now living in Maine it's going to be higher obviously, but —

CHAPTER 7 TRUSTEE: Whatever it is, it is.

MR. BAKER: It is, yes.

CHAPTER 7 TRUSTEE: But I just want —

MR. BAKER: Yeah.

CHAPTER 7 TRUSTEE: — real numbers for what his —

MR. BAKER: Yeah.

CHAPTER 7 TRUSTEE: — current expenditures are.

MR. WERTZ: Yeah. Ah, I would like to see a copy of that trust and also the name and address of your girlfriend, Josephine I think you said?

CHAPTER 7 TRUSTEE: I've got —

MR. BAKER: Yes.

CHAPTER 7 TRUSTEE: — I've got a copy um, of the trust. Does she live up there in Maine with you?

MR. MARRAMA: Yes.

CHAPTER 7 TRUSTEE: Okay.

MR. WERTZ: Okay.

CHAPTER 7 TRUSTEE: Okay. A couple of questions sir?

WELLS FARGO: Yeah. Ah, this is with regards to the mortgages and the Gloucester property. You say it's your intent to refinance both mortgages?

MR. MARRAMA: Yes.

WELLS FARGO: Um, but on the other hand ah, you stated the value of the house is ah, under $200,000 dollars.

MR. BAKER: Three hundred. Didn't he say $300,000?

MR. WERTZ: I had actually — not to interrupt —

MR. BAKER: Three hundred.

MR. WERTZ: — but ah, when he refinanced and some. of the monies that has dissipated, ah, I think the last appraisal within the last year was $365,000 for that property.

CHAPTER 7 TRUSTEE: Okay. Well we'll —

MR. MARRAMA: That's not correct.

CHAPTER 7 TRUSTEE: — going to — we're gonna get, we're gonna get a new —

MR. BAKER: We could, we could, we —

CHAPTER 7 TRUSTEE: We'll find out what it currently is.

MR. MARRAMA: He's not correct on that statement.

CHAPTER 7 TRUSTEE: Okay.

WELLS FARGO: Well, I, I guess my question is between the first and the second mortgage the principal balances are over $400,000 dollars.

CHAPTER 7 TRUSTEE: Okay. So the question is if you, just the first and second, you're going be able to strip the liens presumably. The third is not real.

MR. BAKER: Not real.

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CHAPTER 7 TRUSTEE: Um, if the house is worth $300,000 and you owe $400,000 how are you gonna refinance?

MR. MARRAMA: Well, see I don't know because we, we were hoping to, to work out —

MR. BAKER: The details remain to be worked out it sounds like.

CHAPTER 7 TRUSTEE: It sounds like a substantial detail. Not — one more question, sir.

WELLS FARGO: Um —

CHAPTER 7 TRUSTEE: If you have anything.

WELLS FARGO: Nothing.

CHAPTER 7 TRUSTEE: Counsel, you're satisfied over here? Or —

MALE VOICE: He, he's with the Bank.

CHAPTER 7 TRUSTEE: You're with the bank? Okay. Anyone else have any questions? All right. This matter is um — what do you want to — what, what's your pleasure?

MR. WERTZ: Ah, we are going to seek a 2004 deposition however um, because of actions that took place in the State Court action I don't want that to happen here

again. So I'd like to also continue this ah, in the event that ah —

CHAPTER 7 TRUSTEE: Yeah.

MR. WERTZ: — the deposition is not allowed.

CHAPTER 7 TRUSTEE: Okay. Well I'm definitely going to continue this. Um, let's con — ah, what I'm gonna do is continue it now for May 8. But what I'll do David, is I'll give you a call and we'll agree on a date later in May up at my office. Um, so that we'll have some more time and won't be holding up a bunch of people. But for the record I'll continue it to the eight and then on the eight I'll boot it over to whenever. And I'll consult with other ah, anyone else who wants to know about it um, as, as well and then you can decide whether you want to ask qu — I, I'm going to have more questions once I see all these documents. And whether you want to ask some at a continued 341 or at a ah, 2004 is up to you.

MR. WERTZ: Ah, just one last thing. For the next meeting, if they could provide ah, some verification of the claim by Jack Holland of $82,000 I'd like to see something.

CHAPTER 7 TRUSTEE: Well, he's going to have to file a proof of claim and there'll be opportunity to object to the proof of claim. So I, I'm ah, I'm more interested in assets and liabilities right now.

MR. WERTZ: Okay.

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CHAPTER 7 TRUSTEE: Okay.

MALE VOICE: You, you have a hearing, there's a hearing scheduled on the fourth — or April 30th. Is that —

CHAPTER 7 TRUSTEE: Was that one of the —

MR. BAKER: That's to avoid the liens.

CHAPTER 7 TRUSTEE: Avoid the liens.

.MR. BAKER: And I think I'd like to know about the financing before trying to avoid the liens.

CHAPTER 7 TRUSTEE: Well, that's, that's up to you guys. And have a great time in Court on the 30th. I will not ah, be attending. And however it works out, it works out. Okay?

MR. BARER: Thank you.

CHAPTER 7 TRUSTEE: The matter then stands continued to 10 — are we still in the 10's here Chris?

MALE VOICE: Ten-thirty.

THE CLERK: You're still in 10:30.

CHAPTER 7 TRUSTEE: Ten-thirty on the eighth of May.

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THE CLERK: Got it.

CHAPTER 7 TRUSTEE: Very good.

MR. MARRAMA: Thank you, sir.

(Adjourned.)

APPENDIX I — DECLARATION OF TRUST DATED AUGUST 9, 2002

DECLARATION OF TRUST

This Declaration of Trust made by JOSEPHINE BOLLETTIERO of 10 Norton Avenue, York, Maine, hereinafter called the Trustee. The undersigned Trustee agrees to hold all assets delivered to her in her said capacity as set forth herein.

WITNESSETH:

1. This Trust shall be known as the "BO-MAR REALTY TRUST." This shall be a revocable trust.

2. The Trustee shall have complete control and management of the trust property and the power to invest and reinvest the assets of the trust, in such manner and in such property as she shall deem. With the written permission of the beneficiaries, the Trustee shall have the power to borrow money and mortgage the assets of the trust; to purchase or sell any property of any character at public or private sale for cash, credit or mortgage and upon such terms and conditions as they shall see fit; to let, hire or lease any property; to take and give options for land, property or interests to be bought or sold for the trust; to erect buildings and to improve, remodel or otherwise alter or dispose of any buildings of the trust; to pay commissions and fees to brokers and others for services rendered to the trust; to insure the trust and its assets against fire or other possible hazard, liability or contingency in such manner and in such companies as she shall deem advisable; and to execute such

written instruments, contracts, bills of sale, mortgages or other documents as may be necessary to carry out the foregoing powers. No purchaser shall be required to see to the application of the purchase money delivered to the Trustee.

3. No Trustee or beneficiary shall be personally liable for any contract, liability or obligation of the trust and all persons, business associations or corporations dealing with the Trustee shall look only to the funds or property of the trust for payment of any debt, damage, judgment or decree.

4. The Trustee shall not be liable to any beneficiary except for her own willful misconduct and shall not be required to give any bond.

5. The gross receipts from the trust from any and all sources shall be applied to the payment of real estate taxes, water and sewer bills, interest and other expenses of the trust. Any remaining balances may at the discretion of the Trustee be used to reduce encumbrances on the trust property or be divided among the beneficiaries in such a manner as the Trustee shall determinate appropriate.

6. All property whether real, personal or mixed, tangible or intangible that may be transferred, conveyed, assigned or given to the trust shall be held by the Trustee for the benefit of beneficiaries set forth on Schedule A. The share or interest of any present or future beneficiary shall be considered personal property. No rights of the beneficiaries hereunder shall be subject to assignment or anticipation; nor shall said rights be liable for any indebtedness or obligations of any beneficiary; nor shall such rights be subject to attachment or any other order, decree or process of Court on account of, or for the purpose of collecting any such indebtedness or obligation of any beneficiary. Further,

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the Trustee shall not be required to make any disbursement to any assignee or creditor of any beneficiary, or otherwise than to the hands of the beneficiary in person.

7. Following the death of last surviving Primary beneficiary, or upon the sale of all Trust real estate, this trust shall terminate and the Trustee then serving shall distribute the assets then comprising the trust estate among the beneficiaries as set forth on the attached Schedule of Beneficiaries or as the beneficiaries shall instruct the Trustee.

8. The terms of this trust may be amended, modified or added to at any time by an instrument in writing signed and acknowledged by the then acting Trustee and assented to in writing by such of the beneficiaries then having interests in the trust estate who are of legal age according to the laws of the State of Maine. A Trustee may decline or resign at any time by an instrument in writing signed and acknowledged which instrument shall in due course be recorded in the York County Registry of Deeds for the State of Maine. In the event of the death, incapacity or resignation of Josephine Bollettiero as Trustee, then Lisa Passacantilli shall act as successor Trustee with all the powers, rights and responsibilities of the original Trustee. In the event of a vacancy in the position of Trustee, then a majority of the beneficiaries shall elect a successor Trustee. Any successor Trustee shall have all the powers and be subject to the duties and liabilities of the present Trustee.

IN WITNESS WHEREOF, said JOSEPHINE BOLLETTIERO has set her hand this 9th day of August, 2002.

s/ Josephine Bollettiero
JOSEPHINE BOLLETTIERO

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SCHEDULE OF BENEFICIAL INTERESTS

PRIMARY BENEFICIARY
ROBERT MARRAMA

PERCENTAGE OF INTEREST
100%

CONTINGENT BENEFICIARIES

In the event of the death of Robert Marrama, then his interest in the trust shall pass as follows:

A. 50% to Josephine Bollettiero;
B. 25% to Jennifer Marrama;
C. 25% to Jeana Marrama.